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UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

Report of the Intergovernmental Group of Experts on Restrictive Business Practices on its fourteenth session

held at the Palais des Nations, Geneva,
from 6 to 10 March 1995

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INTRODUCTION

1. The Intergovernmental Group of Experts on Restrictive Business Practices held its fourteenth session at the Palais des Nations, Geneva, from 6 to 10 March 1995.

2. In the course of its session, the Group held four plenary meetings and six informal meetings.

Opening statements

3. The **Chairman** said that, in the preparations for the Third Review Conference, the Intergovernmental Group of Experts should assess the implementation of the Set of Principles and Rules and formulate proposals to update the Set and strengthen its implementation in the context of globalization and liberalization of trade since the conclusion of the Uruguay Round. Developing countries attached great importance to competition policy, as liberalization of governmental barriers had necessitated making renewed efforts to control private barriers. Such efforts were all the more critical for many countries, owing to imbalances in market power.

4. National competition policies would not be sufficient in themselves to control restrictive business practices in a global environment; the Second Review Conference had reaffirmed the importance of the principles contained in the Set, as well as their effective implementation. The international community now needed to elaborate the rules of the game for international competition and to ensure that these rules were respected. This was the only safeguard remaining to developing countries since they had dismantled their protective barriers; any laxity in applying competition rules risked causing grave damage to their production structures. The harmonization and enforcement of competition rules would ensure free access to markets, reduce any tensions engendered by trade policies and favour the emergence of competition which would promote economic efficiency and consumer welfare. While efforts were needed by Governments, enterprises should also be allowed to play their role and the countervailing force of consumers should likewise be promoted. Many developing countries lacked the institutional capacity effectively to apply the Set, and would therefore benefit from further technical cooperation to this end, including the training of personnel and access to information on global market structures.

5. The **Officer-in-Charge of the International Trade Division** stated that the current session of the Group of Experts should prepare the ground for the Third United Nations Conference which would review the implementation of the Set of Principles and Rules, decide how to develop it, and determine UNCTAD's future work on competition policy. He referred to the substantial work undertaken by UNCTAD in this area since the Second Review Conference, both of an analytical nature and in the field of technical cooperation as well as to the work currently under way. In the light of changes in the global environment, demands by many States for the inclusion of competition policy on the multilateral trade agenda, and proposals for trade and competition policy to be discussed at UNCTAD IX, the

emphasis on national and bilateral action now needed to be complemented by renewed efforts to strengthen multilateral action. In this regard, he recalled that the Uruguay Round Agreement on Trade-related Investment Measures (TRIMs) provided that not later than five years after entry into force of the WTO Agreement, the Council for Trade in Goods shall consider whether the Agreement should be complemented with provisions on policy for investment and competition. Moreover, the Trade and Development Board had agreed that UNCTAD should "prepare policy analysis and provide a forum for intergovernmental deliberation and global consensus-building on the new and emerging issues on the international trade agenda, such as trade and environment and competition policy, thus contributing to a better understanding of such issues, including their development implications for developing countries." He therefore proposed that UNCTAD promote consensus among States on competition policy by: identifying common ground in competition approaches followed by States; clarifying divergences and encouraging convergence; deriving policy implications, including the elaboration of basic competition principles applicable at the national, regional and international levels; and improving technical cooperation in this area.

Chapter I

PREPARATIONS FOR THE THIRD UNITED NATIONS CONFERENCE TO REVIEW ALL ASPECTS OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES

(a) Review of 15 years of application and implementation of the Set

(b) Formulation of proposals for the improvement and further development of the Set of Principles and Rules

(Agenda item 3)

6. For its discussion on this item, the Intergovernmental Group of Experts had before it the following documentation:

> "Preparations for the Third United Nations Conference to Review all Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices: (a) Review of 15 years of application and implementation of the Set; (b) Formulation of proposals for the improvement and further development of the Set of Principles and Rules" - Note by the UNCTAD secretariat (TD/B/RBP/105).

7. The representative of **France** stated that the participation of experts from capitals in the meetings of the Intergovernmental Group of Experts had helped keep the focus on issues of substance and ensured that a pragmatic approach was taken. The Group could now reflect on how to improve its working methods further so as to disseminate the findings based on the valuable experience of competition authorities, and thus promote economic efficiency, consumer welfare and the development of all countries seeking a more efficient organization of their markets. To stimulate exchanges in this area, his Government had organized the "Rencontres Mondiales de la Concurrence", with the participation of many competition authorities and international organizations. In line with the French Government's policy of strengthening cooperation in this area, it fully supported UNCTAD's work on competition.

8. The representative of **Canada** emphasized that an increasing number of countries had already developed domestic competition legislation, although there was also a need continuously to modernize policy approaches. In this context, the Intergovernmental Group of Experts was a useful and unique forum for the promotion of "soft harmonization", leading towards greater convergence and coherence of underlying principles, statutory rules, and enforcement practices across jurisdictions. For Canada, international cooperation on competition policy was a priority, as greater harmonization and effective competition were deemed to reduce the cost of doing business, enhance market transparency and lead to welfare-increasing investment, trade and marketplace transactions.

9. The representative of **Poland** described the latest achievements of the Polish Anti-Monopoly Office (AMO) and outlined its strategy for the future. The

activities of the AMO were governed by the Act on Counteracting Monopolistic Practices, of 24 February 1990. On 23 February 1995, the Polish Parliament had amended several articles of the Act, concerning new definitions of certain vertical and horizontal agreements, the shaping of organizational structures of economic entities, and new procedures for application of the Act. The main change was connected with merger and acquisition control and notification of an intention to merge economic entities. Competition law enforcement in Poland was being constantly refined by the issuance of guidelines and communiqués explaining the implementation of competition policy and showing how the AMO proceeded in cases involving monopolistic practices, or ownership/organizational transformations of enterprises. In respect of competition policy, the AMO envisaged strong support for consumer protection as well as establishing close everyday working relationships with competition authorities around the world.

10. The representative of **Tunisia** said that, with the achievement of macroeconomic reforms and the creation of an environment conducive to private initiatives, the public authorities of his country had been placed in a position to help enterprises increase their capacity to compete better internationally within the framework of the GATT agreements. A restructuring programme aimed at strengthening the Tunisian industrial sector was under way. Parallel to this, a recasting of the economic rules had been undertaken with a view to adapting the legal framework to the new economic context. Tunisia had recently promulgated its first ever competition regulation as well as a law for the protection of consumers. A law on external trade was envisaged so as to protect national interests against unfair trade practices and cover anti-dumping measures. He then went on to describe in detail Tunisian competition rules which had been inspired by those of developed countries, particularly France and the countries of the European Community. The new law was very close to the model proposed by the UNCTAD secretariat. The entry into force of the law and of competition policy rested on three institutions: (a) the Department of Competition and Domestic Trade, under the Ministry of Trade; (b) the Commission on Competition; and (c) the Courts of Justice. During the early years of application of the new law, training and informing economic operators about the rules of economic competition was a paramount concern. This effort would be evaluated and in this context a draft amendment was under study by the Chamber of Deputies, aimed at banning exclusive contracts, controlling monopolies and reinforcing the structure and independence of the Commission on Competition. In view of the recent changes in its legislation, and the gradual integration of its economy into that of the world, Tunisia - as a founding member of the World Trade Organization and a country in the process of negotiating an agreement on a free trade zone with the European Community - would welcome greater cooperation on questions of competition policy and consumer protection within the framework of UNCTAD.

11. The representative of **Germany** said that his Government was convinced that the Set contained sound competition rules and principles which were being applied by a steadily increasing number of member States, and with increasing effectiveness. The forthcoming Review Conference should not only give due recognition to this achievement, but also encourage more member States to hasten to adopt, improve and effectively enforce appropriate restrictive business

practices legislation. This would be the best way for each country to demonstrate its commitment to the Set and to contribute to the attainment of the main objectives. The UNCTAD secretariat's studies, multilateral consultations and development of instruments for improving international cooperation had contributed to the success of this work. The secretariat should now be requested to submit suggestions for the Review Conference that would result in the adoption of competition laws by those countries which had not yet done so. In this connection, he said that his Government was determined to continue providing technical assistance to developing and other countries, in cooperation with the UNCTAD secretariat; there was no other forum as suitable as the UNCTAD Intergovernmental Group of Experts for bringing together providers and recipients of technical assistance, with a maximum of efficiency. He suggested that the secretariat should submit to the Group of Experts' suggestions for the Review Conference as to how technical assistance activities, especially for least developed countries, could be further improved in the light of scarce resources. He stressed the unique role of the Group of Experts as being the only international forum where competition experts from around the globe could exchange their views, and said that the secretariat should continue to identify areas of competition not dealt with elsewhere.

12. The representative of the **Republic of Korea** said that, with the end of the cold war era, economic issues had come to the forefront of the global agenda. The rapid development of trade liberalization and internationalization of companies had highlighted new obstacles to trade, such as anticompetitive practices of companies, imperfect market structures and unfair trade practices. The increasing proliferation of transnational corporations and the development of certain strategic alliances among them had made competition policy issues more complicated. Cooperation between the developing countries currently undergoing dynamic growth and the developed countries with considerable experience in the RBP field was needed more urgently than ever before. As it was crucially important for the antitrust authorities to deal with such issues, the current session and the forthcoming Review Conference were most timely for increasing mutual understanding and cooperation among competition policy authorities. UNCTAD's RBP forum should be strengthened to play a leading role in international discussions on competition policies, thus guaranteeing effective enforcement of the Set.

13. The representative of the **Russian Federation** stressed the importance of the present session, which was the first to take place since the inception of the World Trade Organization (WTO). The Third Review Conference would provide a good opportunity for improving the work of the Intergovernmental Group of Experts under the new conditions created following the conclusion of the Uruguay Round, in particular in the area of services, intellectual property rights, investment, and even agriculture and textiles, where some progress had also been made. However, as the WTO dealt only with governmental barriers, and not with restrictive business practices by enterprises, the Intergovernmental Group of Experts on RBPs was a unique forum, since it dealt with important competition issues at the micro-economic level. It was now necessary for the Group to come to an agreement after 15 years of experience in the implementation of the Set,

and to make proposals to the Third Review Conference on measures aimed at further developing the Set over the next five years.

14. The representative of the **United Kingdom** summarized the Deregulation and Contracting Out Act 1994, which came into force on 3 January 1995, amending the Competition Act and the Fair Trading Act. The new Act would in some circumstances speed up and simplify national competition procedures and reduce the burden on industry, without sacrificing the quality of the enforcement work or the commitment to an effective competition policy. She noted that the forthcoming Third Review Conference should be welcomed as being a mechanism for assessing the Group's successes as well as for identifying areas where further work might be carried out in sharing competition experiences with countries now developing their own competition policy and rules. It was hoped that UNCTAD would continue to concentrate on competition issues relevant to developing and other countries, and on further exchanges of experiences in the enforcement of competition rules.

15. The representative of **China** stated that since the Second Review Conference new developments had taken place in the application and implementation of the Set. Many developing countries, as well as China, had undertaken economic reforms and adopted legislation on competition. In these reforms, the Set of Principles and Rules had been an invaluable guide. The Intergovernmental Group of Experts on RBPs had proven very useful as a forum for the exchange of experiences and information among all countries. China was ready to cooperate in securing a positive outcome of the present fourteenth session, as this would have a direct impact on the results of the Third Review Conference.

16. The representative of the **United States of America** stated that the work of the Group of Experts and of the Review Conference should be focused on improving cooperation among competition authorities, developing competition policy and facilitating practical implementation of the Set. The United States had improved its ability to cooperate in this area by adopting the International Antitrust Enforcement Assistance Act of 1994, allowing its competition authorities to enter into mutual assistance agreements with other competition authorities and to share antitrust evidence with them, on the basis of reciprocity and confidentiality.

17. The representative of **Malta** said that his country had recently enacted Act No. XXXI of 1994, with the purpose of regulating competition and providing for fair trading. He then gave a brief description of the contents of the law, which entered into force on 1 February 1995, and described efforts towards disseminating information on the law at the level of the business community. In concluding, he emphasized UNCTAD's unique role and vast experience in the field of competition policy at the international level.

18. The representative of the **European Commission** described the latest developments in the application of the Community's competition legislation, highlighting cases involving cartels, mergers and the granting of exclusive rights. He announced that the Community would liberalize its telecommunications

industry by 1998, but that progress would be slower in the energy and postal sectors. The Community was also trying to reduce the burden of fact-finding and the cost of complying with competition policies, to reinforce rights of defence and economic analysis of cases and to increase transparency. He emphasized the importance of explaining competition policy to businesses and the general public. In this connection, he drew attention to several publications issued by the Community. In the light of globalization trends, the Community was concluding several agreements with Eastern European and Mediterranean countries containing provisions on competition policy, such as the recent customs union treaty with Turkey.

19. The representative of **Sri Lanka** said that the new Government of his country had emphasized on more than one occasion the need to continue the market liberalization process in his country. In this connection, the Fair Trading Commission had been further strengthened with the repeal of the provisions relating to pricing and making mandatory the provisions for mergers. Sri Lanka had been exploring the possibility of amalgamating the Fair Trading Commission Act No. 1 of 1987 with the Consumer Protection Act No. 1 of 1979 and preliminary work had been done on having one institution instead of two bodies. In implementing this, his Government was also looking at the results in other countries which had successfully combined Fair Trading and Consumer Protection under a single statute.

20. The representative of **Turkey** said that the fourteenth session of the Intergovernmental Group of Experts had the important task of preparing the ground for the Third United Nations Conference to Review all Aspects of the Set. He added that the Review Conference would determine the broad directions of UNCTAD's future work in this field. He stated that his country considered the Intergovernmental Group of Experts to be a useful forum for achieving harmonization of principles and rules on RBPs. Turkey had adopted two new laws recently, one related to competition and the other concerning protection of consumers. These two laws entered into force at the beginning of 1995.

21. The representative of **Egypt** noted that the new increased globalization of the economy, the liberalization of trade since the Uruguay Round and the widespread market-oriented economic reforms were all developments that presented a challenge for countries and necessitated an analysis of the provisions of the Round with respect to competition policies and laws in terms of their impact on developing countries. Moreover, the three main elements affecting competition policies and laws - intellectual property protection, trade in services, trade-related aspects of investment - were all relevant to business practices either at a national or international level and hence should be examined in depth in the study to be prepared for the Third Review Conference. The study should also cover an assessment of the last 15 years of application of the Set. At the national level, many countries had gone through a process of economic reform and a programme of privatization which needed to be enforced and supported by competition law. Egypt was formulating such legislation with the assistance of the UNCTAD secretariat for the initial phase. In this connection, it was hoped

that technical assistance would be extended in the future also in support of a national mechanism for implementing such law.

Chapter II

CONSIDERATION OF TEXTS AND PROCEEDINGS AT THE CLOSING PLENARY

A. Consideration of texts

22. At its 4th (closing) plenary meeting on 10 March 1995, the Intergovernmental Group of Experts on Restrictive Business Practices adopted, with amendments, the draft agreed conclusions on agenda items 3 (a) and 3 (b) circulated in TD/B/RBP/L.68. For the text of the agreed conclusions as amended, see annex I below.

B. Provisional rules of procedure for the Conference

(Agenda item 3 (d))

23. As the Intergovernmental Group of Experts had agreed to keep unchanged the rules of procedure followed at the first and second Review Conferences, it therefore approved for the third Review Conference the draft provisional rules of procedure as contained in TD/B/RBP/70.

C. Closing statements

24. The representative of **Italy** referred to the proposals that had been put forward by various delegations during the session covering both the scope of future topics and the method of work, and said that the approach envisaged would allow the Intergovernmental Group of Experts to be efficient and productive. It was anticipated that the Third Review Conference would be as successful as the preparatory meeting and would include a serious discussion of competition matters.

25. The representative of **France** stated that his country attached particular importance to the economic development of the Mediterranean basin and the African continent. Although all continents were affected by the process of globalization of markets, stimulated by the new emerging countries and by the deep and rapid transformation of the economies of central and eastern Europe, one vital characteristic must transcend these changes: free competition must lead to economic progress and consumer well-being. Nearly 40 years of experience with competition policy since the signing of the Treaty of Rome had shown member countries of the European Union that it was possible to meet the dual challenge of, on the one hand, market integration and, on the other, enterprise competitivity. France looked forward to sharing the unique experience gained in this regard with developing and other countries and would continue to work in a spirit of cooperation, efficiency and consensus on the diffusion of principles of competition policy around the world. During the current session, many OECD countries had made concrete proposals to improve efficiency, notably by devoting more time to informal sessions or workshops where competition policy concepts

could be discussed and practical methods elaborated that were founded on actual experience.

26. He emphasized, in particular, that the animated informal discussions during the session had revealed how critical it was to have the active participation of experts on competition policy from the various capitals. The effectiveness of this approach had proved its worth as, over the past few years, a growing number of States had adopted, improved and applied effective legislation on restrictive business practices. With a view to a successful third Review Conference, he called on each member country of UNCTAD to take into account the necessity to send representatives from their capitals who were specialists in competition practice; this was particularly important in dealing with the Model Law that the Group had elaborated. In heeding this appeal, the Intergovernmental Group of Experts would continue to do useful work for the well-being of consumers around the world and the Group would maintain its raison d'être.

27. The spokesman for the **Group of 77** (Colombia) expressed gratitude to the Chairmen and Bureau and all the delegations whose tireless efforts had contributed so much to the important preparations for the third Review Conference.

28. The representative of **Honduras** commended the high-quality documentation which had served as a good basis for discussions during the session. His country, as a member of the Central American Integration System (SICA), wished to reaffirm the importance of UNCTAD's contribution in the sphere of restrictive business practices; the third Review Conference was especially important in that it would give direction to future work in this area. It was increasingly recognized that competition policy would be one of the principal issues in international trade. In this context, Honduras would be redoubling its efforts to deal with the situation and would appreciate UNCTAD identifying ways to deliver technical assistance on competition questions, including the holding of national seminars to define the broad outlines of competition policy with a view to countries being able to cooperate on the elaboration of the Model Law and putting in place a mechanism for elaborating their relevant national legislation.

29. The representative of **Argentina** observed that the participation of high-level experts had enriched the discussions during the informal meetings and reaffirmed his country's keen interest in collaborating on development activities within UNCTAD, especially with a view to rendering technical cooperation projects on restrictive business practices a success. He then went on to cite new laws in Argentina dealing with free and fair competition and consumer protection. Considerable progress had been made on the adoption of legislation at both the national and regional levels. In this respect, UNCTAD's technical cooperation support was especially important for the countries of Latin America and indeed for all developing countries. His delegation supported the creation of a database and a model law on competition, which could be available for consultation on a permanent basis. In this respect, whatever donor countries could do towards implementing this project would be greatly appreciated.

30. The spokesman for the **Asian Group** (Islamic Republic of Iran) stated that his Group supported the work under way and anticipated that the concrete results expected as a result of the third Review Conference would contribute to fair competition and the greater participation of developing countries in international trade and the global trading system.

31. The representative of **Germany** commended the constructive attitude and cooperation of all member States in helping to prepare the basis for a successful third Review Conference. Many useful proposals for future activities made at the Group's thirteenth session had now been augmented by a number of substantial proposals put forward by the secretariat at the current session and would determine the direction of future work. Although the realization of these proposals implied a heavy workload for the secretariat, the end result of this effort would be enhanced international acceptance and appreciation of the Set. This outcome would consolidate and confirm the special position of the Intergovernmental Group of Experts within the United Nations system and in relation to other regional or international organizations dealing with competition issues either now or in the future. In closing he said that his delegation was returning home with a most positive, favourable impression of the Group's role.

32. The spokesman for **Group B** (Switzerland) congratulated the Chairmen and Bureau on the successful outcome of the session and extended thanks to all who had contributed. These results augured well for the third Review Conference.

33. The representative of the **United Kingdom** said that the current session had not only been crucial for shaping the agenda for the third Review Conference but also in setting a course for the future. She expressed satisfaction that the Chairman and the Bureau had been able to draw up a programme of topics for the Review Conference that was acceptable to the majority of delegations. The contributions of the four guest speakers who had addressed the Group during the informal segment had been valuable. Her country expected that the third Review Conference would underline the importance of UNCTAD's work in providing technical assistance and cooperation with developing and other countries. As the Intergovernmental Group of Experts on Restrictive Business Practices was a unique body, it was hoped that it would continue to provide a forum for the exchange of views on competition law and enforcement issues.

34. The spokesman for the **African Group** (Algeria) congratulated the Chairmen and all whose efforts had been instrumental in advancing the work done during the session and in making useful contributions to the preparations for the third Review Conference. His Group was pleased to see the support shown for organizing in Tunisia the preparatory meeting for the Conference for the benefit of African countries.

35. The representative of **Canada** said that the contributions of the four experts who had addressed the informal meetings had been educational and refreshing. Canada attached a high value to the UNCTAD forum for providing the opportunity for officials from developed, developing and other countries to meet and discuss

aspects of their respective laws. This process helped build on the broad similarities in approaches to competition matters without minimizing any legitimate differences that might remain. The opportunity for frank and constructive discussion helped the search for common elements which would accelerate the process of expanding the administration and enforcement of competition law among member countries and promoted the process of harmonization. He was certain that the third Review Conference would be a successful exercise and define future directions for the Intergovernmental Group of Experts.

36. The representative of the **United States of America** referred to the Chairman's statesmanship in conducting the session as having been crucial to the successful outcome. The exchange of views of experts from around the world had been of great value as had the contribution of the four invited experts who addressed the informal meetings. The third Review Conference was expected to yield further opportunities for countries to cement their bonds of common interest and shared goals of competition policy.

37. The representative of the **Russian Federation** stated that it had been especially useful to hear the opinions of specialists in the field during the informal meetings; likewise all the experts from the various countries who had shared their views and experience had enriched the debates. She was certain that the consensus agreement reached at the current session would serve as a useful foundation for making the Group's future work even more effective. To this end, she hoped that the issues still outstanding could be resolved following consultations with the respective capitals before the third Review Conference. This Group of Experts was the best and most suitable structure for dealing with such trade questions because specialists from all countries could participate. This potential for useful work should be reflected not only in the third Review Conference but also in UNCTAD IX. She especially appreciated how all countries had shown an understanding of the role that technical assistance played, particularly for countries in transition to a market economy, including the CIS countries. Through multilateral technical-cooperation advisory services, it was hoped that experts would be able to visit and learn from more experienced countries.

38. The representative of **Romania** observed that good work had led to good results. He then announced that the Romanian parliament had adopted two days previously a specific draft law on competition, modelled according to the European Union's competition rules and regulations and inspired by the Set and Model Law developed by the Intergovernmental Group of Experts.

39. The representative of **Venezuela** reiterated the statement made by the spokesman for the Group of 77 in thanking the Chairman and Bureau for their outstanding work.

Chapter III

ORGANIZATIONAL MATTERS

A. Opening of the session

40. The fourteenth session of the Intergovernmental Group of Experts on Restrictive Business Practices was opened on 6 March 1995 by Mr. B. Alipour (Islamic Republic of Iran), Vice-Chairman of the thirteenth session.

B. Election of officers

(Agenda item 1)

41. At the 1st plenary meeting of its fourteenth session, on 5 March 1995, the Intergovernmental Group of Experts elected the following Bureau:

Chairman: Mr. Ridha Touiti (Tunisia)

Vice-Chairmen: Mr. A. Oberholzer (South Africa)
Mr. B. Alipour (Islamic Republic of Iran)
Mr. R. Servantes (Mexico)
Mr. E. Hand (United States of America)
Mrs. E. Szymanska (Poland)

Rapporteur: Mr. François Souty (France)

C. Adoption of the agenda and organization of work

(Agenda item 2)

42. Also at its 1st plenary meeting, the Intergovernmental Group adopted its provisional agenda (TD/B/RBP/104) as follows:

1. Election of officers

2. Adoption of the agenda and organization of work

3. Preparations for the Third United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices:

   (a) Review of 15 years of application and implementation of the Set;

   (b) Formulation of proposals for the improvement and further development of the Set of Principles and Rules;

   (c) Provisional agenda for the Conference;

(d) Provisional rules of procedures for the Conference.

4. Other business

5. Adoption of the report of the Intergovernmental Group of Experts.

D. Provisional agenda for the Conference

(Agenda item 3 (c))

43. At its 4th plenary meeting on 10 March 1995, the Intergovernmental Group of Experts approved the draft provisional agenda for the Third Review Conference (agenda item 3 (c)) as issued in TD/B/RBP/L.69. (See annex II below.)

E. Other business

(Agenda item 4)

44. No points were raised during the session under this agenda item.

F. Adoption of the report of the Intergovernmental Group of Experts

(Agenda item 5)

45. At its 4th (closing) meeting on 10 March 1995, the Intergovernmental Group of Experts adopted the draft report on its fourteenth session (TD/B/RBP/L.67 and Add.1) and authorized the Rapporteur to complete the final report, as appropriate.

Annex I

PREPARATIONS FOR THE THIRD UNITED NATIONS CONFERENCE TO REVIEW ALL ASPECTS OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES:

(a) REVIEW OF 15 YEARS OF APPLICATION AND IMPLEMENTATION OF THE SET;

(b) FORMULATION OF PROPOSALS FOR THE IMPROVEMENT AND FURTHER DEVELOPMENT OF THE SET OF PRINCIPLES AND RULES

Agreed conclusions of the Intergovernmental Group of Experts*

I. IN ORDER TO ASSIST THE THIRD UNITED NATIONS CONFERENCE TO REVIEW ALL ASPECTS OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES IN ITS WORK, THE INTERGOVERNMENTAL GROUP OF EXPERTS ON RESTRICTIVE BUSINESS PRACTICES REQUESTS THE UNCTAD SECRETARIAT TO:

(a) Prepare a draft study on the scope, coverage and enforcement of competition laws and policies in member States and an analysis of the provisions of the Uruguay Round Agreements relevant to competition policy, including their implication for developing and other countries, in accordance with the outline as contained in TD/B/RBP/105, and taking into account the comments made during the fourteenth session of the Intergovernmental Group of Experts;

(b) Prepare a draft note describing selected cases of restrictive business practices that have an effect in more that one country, in particular developing and other countries, with overall conclusions regarding the issues raised by these cases;

(c) Prepare a further in-depth feasibility study of developing a bibliography of relevant materials dealing with restrictive business practices issues, and the implementation of an appropriate database facility relating to decisions by competition authorities and courts, taking into account the comments made during the fourteenth session;

(d) Revise further the commentary to the Model Law in accordance with the proposals contained in TD/B/RBP/Misc.16 and comments to be received by the secretariat before 15 May 1995;

(e) Prepare a review and assessment of 15 years of application and implementation of the Set;

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* Adopted, with amendments, by the Intergovernmental Group of Experts on Restrictive Business Practices at its fourteenth session, on 10 March 1995.

(f) Organize, resources permitting, a regional workshop on competition policy for African countries, to be held in Tunisia, within the preparatory process for the Third Review Conference;

(g) In view of the importance of the documentation to be prepared for the Third Review Conference, make every effort for the documents to be made available well in advance of the Conference in line with United Nations regulations;

(h) Consider, together with developed countries, ways and means to increase the participation of more capital-based experts particularly from developing countries, least developed countries and Commonwealth of Independent States countries in the work of the Intergovernmental Group of Experts, the Review Conference, and other exercises.

II. IN CONFORMITY WITH ARTICLE 26 OF THE DRAFT PROVISIONAL RULES OF PROCEDURE OF THE REVIEW CONFERENCE AS PROPOSED BY THE INTERGOVERNMENTAL GROUP OF EXPERTS, THE FOLLOWING PROPOSALS ARE PUT FORWARD FOR CONSIDERATION BY THE THIRD REVIEW CONFERENCE:

(a) Taking into account increased needs for technical cooperation and technical assistance in developing and other countries, the UNCTAD secretariat should carry out a review of technical cooperation activities undertaken by UNCTAD and other international organizations, as well as States bilaterally, with a view to strengthening its ability to provide technical assistance in the area of competition by:

(i) Encouraging providers and recipients of technical cooperation to take into account the results of the substantive work done by UNCTAD in the above-mentioned areas in determining the focus of their cooperation activities;

(ii) Encouraging developing countries and countries in transition to identify specific competition areas and issues which they would wish to see receive priority attention in the implementation of technical cooperation activities;

(iii) Identifying common problems encountered in the competition area which might receive attention in regional seminars;

(iv) Enhancing cost-effectiveness, complementarity and collaboration among providers of technical cooperation, both in terms of the geographical focus of technical cooperation activities and the nature of cooperation undertaken;

(v) Mobilizing adequate resources and widening the search for potential donors for UNCTAD technical cooperation in this area;

(vi) Proposing that, in addition to the seminars already offered by the secretariat and other countries in the interest of technical assistance and cooperation, two days of every second session of the Intergovernmental Group of Experts should be devoted to a forum for a comprehensive informal exchange of views and experiences of several developed and other interested countries on issues relating to cases concerning RBPs and other issues relevant to competition which have been raised by developing or other countries. The proposal envisages that developing or other countries wishing to benefit from the forum would give advance notice of their proposed RBP issues, in order to maximize the opportunities for exchange of views and experiences with member countries;

(vii) Proposing, in addition to the multilateral consultations already provided by the secretariat, at least one day of every second session of the Intergovernmental Group of Experts should be devoted to several small workshops at which the secretariat and a few experts from developed and other countries would exchange informally views and experiences with developing and other countries wishing to take advantage of such an exchange of views for the purpose of developing their analysis of specific issues of RBPs in a given country.

(b) In the light of the strong world-wide trend towards the adoption or reform of competition laws and the development of national competition policies over the period since the Set was adopted, Governments might wish to decide at the Review Conference that UNCTAD would embark on an exercise to map out and further strengthen common ground among States in the area of competition policy in identifying restrictive business practices that affect the development of developing countries. In this context, the focus of the exercise, inter alia, would be on:

(i) Identifying "common ground", i.e. broad similarities in the approaches followed on different competition questions by Governments;

(ii) Shedding light and encouraging exchanges of views in those areas where the identification of "common ground" is more difficult, e.g. where there are differences among economic theories, or among competition laws or policies, such as:

(a) The role of competition policy in the strengthening and improvement of the economies of developing and other countries and, in particular, the development of the business community;

(b) Taking into account economic globalization and liberalization of the economies of developing and other

countries, to invite UNCTAD to identify appropriate measures to help those countries that might be hampered by RBPs;

(c) The interface between competition, technological innovation and efficiency;

(d) The competition policy treatment of vertical restraints and abuses of dominant position;

(e) The competition policy treatment of the exercise of intellectual property rights (IPRs) and of licences of IPRs or know-how;

(f) In-depth analysis of differences in the scope of competition laws in individual sectors, in the light of the process of economic globalization and liberalization;

(g) In-depth analysis of the effectiveness of enforcement of competition laws, including enforcement in cases of RBPs having effects in more than one country;

(c) For the purposes of this exercise, reference would be made to the commentary to the Model Law, other relevant documentation already prepared by the UNCTAD secretariat or to be prepared for the Conference (particularly the study on the scope, coverage and enforcement of competition laws and policies, and on selected cases of RBPs having an effect on more than one country, as approved), any further studies requested by Governments, and the database on competition cases and materials which the secretariat is being requested to investigate further.

(d) In order to facilitate the use of the commentary to the Model Law as a basis for this exercise, the Conference would take note of the Model Law and its commentary as a guide to the competition approaches followed on various points by different countries. It would be understood that the Model Law would be widely disseminated, and that this action would not affect the discretion of countries to choose policies considered appropriate for themselves, and that the Model Law would be periodically reviewed in the light of reforms and trends at the national and regional levels.

(e) During future consultations in meetings of the Intergovernmental Group of Experts, individual Governments may wish to clarify the scope or application of their competition laws and policies, as well as the manner in which they would have analyzed and dealt with some of the cases reviewed if they had occurred under their jurisdictions, taking into account relevant provisions of the Uruguay Round Agreements.

(f) In the context of this exercise, Governments may wish to discuss:

(i) How the Set of Principles and Rules might be better implemented;

(ii) The competition policy implications at the national, regional and international levels of globalization and liberalization;

(iii) Techniques and procedures for detecting and sanctioning collusive tendering, including international cartels and other anti-competitive practices;

(iv) The strengthening of information exchange, consultations and cooperation in enforcement at the bilateral, regional and multilateral levels.

(g) Future Intergovernmental Group of Experts sessions should include some time for informal multilateral consultations among delegates on competition policy issues. The topics for the consultations should be disseminated by the secretariat sufficiently in advance of the session of the Intergovernmental Group of Experts so as to permit delegations from all member States to participate in the informal consultations.

(h) Ways and means should be identified to increase the participation of experts/delegates particularly from developing countries, least developed countries and countries in transition, including those countries which have not yet adopted competition policy or laws.

III. OTHER PROPOSALS, ON WHICH AGREEMENT COULD NOT BE REACHED AT THIS POINT, INCLUDE:

(a) To request the General Assembly to convene a Fourth Review Conference in the year 2000;

(b) To decide to change the title of the Intergovernmental Group of Experts on restrictive business practices to that of Intergovernmental Group of Experts on Competition;

(c) To request countries to remove from their national legislation exemptions of export cartels;

(d) To undertake an analysis of transformation of restrictive business practices in the new conditions created after the conclusion of the Uruguay Round, to ensure a consensus on the issue of efficiency of the existing system of control of restrictive business practices in international deals and submit proposals on the perfection of the system interacting with GATT/WTO;

(e) To study empirical evidence of the benefits (including benefits for consumers) to be gained from applying competition principles to national economic development and competitiveness;

(f) To consider policy implications, which might include the elaboration of basic competition principles to be applied at the national, regional and international levels;

(g) What might be the aims and content of any agreement on trade-related aspects of competition policy which might be incorporated in international trade rules? Would it be concerned solely with RBPs by firms, or would it also address actions by Governments deviating from competition principles?

(h) Given the divergences in some areas of national competition policies and the continuing evolution of economic thinking and policies in this area, would it be appropriate for all multilateral agreements on competition to be legally binding, or would there also be room for non-binding guidelines? If so, what should be their role?

(i) In the light of answers to the above questions, should the Set be left unchanged, or should it be revised or supplemented by another instrument?

(j) If another instrument were considered necessary, what would be the nature, objectives and content of such an instrument - should it identify competition principles which might be taken into account in national economic policies, or should it also aim at bringing about greater compatibility between competition principles and international trade rules?

Annex II

PROVISIONAL AGENDA FOR THE THIRD UNITED NATIONS CONFERENCE TO REVIEW ALL ASPECTS OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTED BUSINESS PRACTICES*

1. Opening of the Conference

2. Election of the President

3. Adoption of the rules of procedure

4. Adoption of the agenda

5. Organization of the work of the Conference

6. Election of other officers

7. Credentials: (a) Appointment of a Credentials Committee;

   (b) Report of the Credentials Committee.

8. Review of all aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices:

   (a) Review of 15 years of application and implementation of the Set;

   (b) Consideration of proposals for the improvement and further development of the Set, including international cooperation in the field of control of restrictive business practices.

9. Other business

10. Adoption of proposals for the improvement and further development of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, including international cooperation in this field

11. Adoption of the report of the Conference.

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* As approved by the Intergovernmental Group of Experts at its 4th (closing) meeting on 10 March 1995.

Annex III

MEMBERSHIP AND ATTENDANCE*

1. The following States members of UNCTAD were represented at the session:

Algeria
Argentina
Bangladesh
Bolivia
Canada
Chile
China
Colombia
Costa Rica
Côte d'Ivoire
Cuba
Egypt
El Salvador
Ethiopia
France
Germany
Greece
Honduras
Hungary
India
Indonesia
Iran (Islamic Republic of)
Iraq
Italy
Jamaica
Japan
Libyan Arab Jamahiriya
Madagascar
Malta
Mexico
Morocco
Netherlands
Nigeria
Norway
Pakistan
Paraguay
Philippines
Poland
Portugal
Republic of Korea
Romania
Russian Federation
Saudi Arabia
Senegal
Slovakia
South Africa
Spain
Sri Lanka
Sudan
Switzerland
Thailand
Tunisia
Turkey
United Kingdom of Great Britain and Northern Ireland
United States of America
Uruguay
Venezuela
Yemen

2. The European Community was also represented.

3. The following specialized agency was represented at the session:

The International Monetary Fund.

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* For the list of participants, see TD/B/RBP/INF.34.

4. The following intergovernmental organizations were represented at the session:

League of Arab States
Organisation for Economic Cooperation and Development
Organization of African Unity

5. The following non-governmental organization was represented at the session:

General Category

International Chamber of Commerce.